

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0175, State of New Hampshire v. William Parks, the court on April 6, 2006, issued the following order:

The defendant, William Parks, appeals a finding by the trial court that he violated his probation. He argues that his State and federal constitutional rights to confrontation were violated when the trial court admitted hearsay testimony. We reverse and remand.

The defendant urges us to adopt the reasoning of the U.S. Supreme Court in Crawford v. Washington, 541 U.S. 36 (2004), a case addressing a defendant's Sixth Amendment right to confrontation in a criminal trial. Because we conclude that the defendant's due process rights were violated in the case before us, we need not consider his remaining arguments.

In Stapleford v. Perrin, 122 N.H. 1083 (1982), we enumerated the due process requirements for proceedings that may result in a significant deprivation of liberty, including hearings for the imposition of a suspended sentence. Moody v. Cunningham, 127 N.H. 550, 554 (1986). We further discussed these requirements in Moody where we stated that "[t]he due process protections accorded a defendant who stands to lose his conditional liberty represent a compromise between the need for accurate determinations of fact and the state's interest in being able to imprison a defendant without an adversarial trial when that defendant has violated a condition of his liberty. Id. at 555. "[W]here critical decisions turn on questions of fact, the importance of the right of confrontation should not be underestimated or ignored." Id. "As a general rule, then, there must be a strong preference for cross-examination which may be abrogated only upon a specific finding of good cause for denying confrontation." Id.

In this case, the defendant was alleged to have violated his probation by attempting to regain possession of his car. According to the violation report, the car was in the possession of the police and he was prohibited from recovering it by court order. The evidence presented to support the violation report was testimony by the Chief of Police that an individual had called him to inquire about the sale of the defendant's car. The Chief of Police did not know the individual. The individual called the Chief again two hours later and advised that the defendant had hired him to purchase the car to return it to Connecticut to the defendant. The individual did not appear at the hearing and no evidence was presented that he was unable to do so. Nor did the trial court make a finding that good cause justified his absence and the deprivation of the defendant's right to confrontation.

Given the nature of the allegations against the defendant, we conclude that he was entitled to confront and cross-examine the individual who reported the conversation unless a specific finding of good cause was made to allow the State to proceed without producing him.

Reversed and remanded.

DUGGAN, GALWAY and HICKS, JJ., concurred.

Eileen Fox
Clerk